

MEMORANDUM

Agenda Item No. 8(N)(2)

TO: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

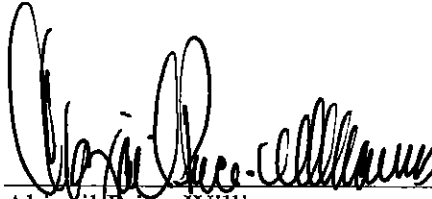
DATE: July 6, 2017

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution approving execution by the County Mayor of a Covenant for Maintenance of Roadway and Landscaping Improvements within the Public Rights-of-Way between Miami-Dade County and the City of South Miami along SW 57 Avenue from SW 74 Street to SW 72 Street; authorizing the County Mayor to execute said agreement and to take all actions necessary to effectuate same; directing the County Mayor to record the Covenant for Maintenance of Roadway and Landscaping Improvements and to provide a copy of such recorded document to the Clerk of the Board within 30 days of execution

Resolution No. R-700-17

The accompanying resolution was prepared by the Transportation and Public Works Department and placed on the agenda at the request of Prime Sponsor Commissioner Xavier L. Suarez.



Abigail Price-Williams
County Attorney

APW/smm

Memorandum



Date: July 6, 2017

To: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

A handwritten signature in black ink, appearing to be "Carlos A. Gimenez", written over the name in the "From:" field.

Subject: Covenant for Maintenance of Improvements Within the Public Rights-of-Way between Miami-Dade County and the City of South Miami to Provide for the Maintenance and Preservation of Roadway and Landscaping Improvements by the City of South Miami Along SW 57 Avenue from SW 74 Street to SW 72 Street

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the attached Resolution authorizing the execution of a Covenant for Maintenance of Roadway and Landscaping Improvements within the Public Rights-of-Way between Miami-Dade County (County) and the City of South Miami (City) to provide for the maintenance and preservation of roadway and landscaping improvements by the City in sidewalks, medians, and raised bulb outs along the County maintained roadway of SW 57 Avenue from SW 74 Street to SW 72 Street (Project).

Scope

The project is located within City boundaries, in Commission District 7, which is represented by Commissioner Xavier L. Suarez.

Fiscal Impact/Funding Source

There is no fiscal impact to the County. The County will be installing the roadway and landscaping improvements through roadway construction project 20160143. The County will save the costs associated with the City's maintenance and preservation of the roadway and landscaping improvements.

Track Record/Monitor


The project will be assigned to Bassam Moubayed, CFM, Chief, Department of Transportation and Public Works (DTPW), Construction Division, who will oversee inspections conducted by DTPW staff to enforce compliance with covenant plans and specifications.

Background

The County is fully funding the Project, and the City has requested that the Project include the installation of enhanced pedestrian, roadway, and landscaping elements within the Project's limits. The County agreed to include the enhanced features provided that the City assumes responsibility to maintain and preserve these improvements in perpetuity.

Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners
Page No. 2

This Covenant obligates the City to maintain, repair and/or replace, as necessary, the stamped concrete crosswalks, colored concrete sidewalks, raised medians with curb and gutter, ground cover, and majule palms in said medians, and landscaped raised bulb outs with curb. In the event that the City does not comply with these requirements, a written notice will give 60 calendar days for the City to make corrections. Failure to address any deficiencies will result in the County making the necessary corrections with the City invoiced for the County's costs.



Alina T. Hudak
Deputy Mayor



MEMORANDUM

(Revised)

TO: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

DATE: July 6, 2017

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 8(N)(2)

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Statement of social equity required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☐ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(N)(2)
7-6-17

RESOLUTION NO. R-700-17

RESOLUTION APPROVING EXECUTION BY THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE OF A COVENANT FOR MAINTENANCE OF ROADWAY AND LANDSCAPING IMPROVEMENTS WITHIN THE PUBLIC RIGHTS-OF-WAY BETWEEN MIAMI-DADE COUNTY AND THE CITY OF SOUTH MIAMI ALONG SW 57 AVENUE FROM SW 74 STREET TO SW 72 STREET; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SAID AGREEMENT AND TO TAKE ALL ACTIONS NECESSARY TO EFFECTUATE SAME; DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO RECORD THE COVENANT FOR MAINTENANCE OF ROADWAY AND LANDSCAPING IMPROVEMENTS AND TO PROVIDE A COPY OF SUCH RECORDED DOCUMENT TO THE CLERK OF THE BOARD WITHIN 30 DAYS OF EXECUTION

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference; and

WHEREAS, both the City of South Miami and Miami-Dade County wish to facilitate the maintenance and preservation of roadway and landscaping improvements to be installed along the County maintained roadway of SW 57 Avenue from SW 74 Street to SW 72 Street,

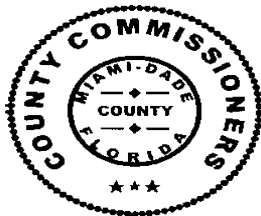
NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the Covenant for Maintenance of Roadway and Landscaping Within the Public Rights-of-Way between Miami-Dade County and the City of South Miami, in substantially the form attached hereto and made a part hereof; authorizes the County Mayor or County Mayor's designee to execute same for and on behalf of Miami-Dade County and to exercise the provisions contained

therein; directs the County Mayor or County Mayor's designee to record the Covenant for Maintenance of Roadway and Landscaping and to provide a recorded copy of the Covenant within thirty (30) days of its execution; and directs the Clerk of the Board to attach and permanently store a recorded copy of the Interlocal Agreement together with this resolution.

The foregoing resolution was offered by Commissioner **Sally A. Heyman**, who moved its adoption. The motion was seconded by Commissioner **Daniella Levine Cava** and upon being put to a vote, the vote was as follows:

Esteban L. Bovo, Jr., Chairman	aye		
Audrey M. Edmonson, Vice Chairwoman	aye		
Bruno A. Barreiro	aye	Daniella Levine Cava	aye
Jose "Pepe" Diaz	aye	Sally A. Heyman	aye
Barbara J. Jordan	aye	Joe A. Martinez	absent
Jean Monestime	aye	Dennis C. Moss	aye
Rebeca Sosa	absent	Sen. Javier D. Souto	aye
Xavier L. Suarez	aye		

The Chairperson thereupon declared the resolution duly passed and adopted this 6th day of July, 2017. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.



MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

Christopher Agrippa

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Lauren E. Morse

**COVENANT FOR MAINTENANCE OF ROADWAY AND LANDSCAPING WITHIN
RIGHT-OF-WAY BETWEEN THE CITY OF SOUTH MIAMI AND MIAMI-DADE
COUNTY**

A. Miami-Dade County, a political subdivision of the State of Florida, through its Department of Transportation and Public Works (the "County") will install the roadway and landscaping improvements in the sidewalks and roadway (the "Improvements") within the right-of-way of SW 57 Avenue from SW 74 Street to SW 72 Street (the "Project Limits"); and

B. The City of South Miami (the "City") shall be solely responsible for the maintenance and preservation of the Improvements within the Project Limits.

In consideration of the mutual benefits to flow each to the other, the parties covenant and agree as follows:

1. Upon completion of the Improvements by the County, and in accordance with Paragraph 9, the City shall, at its sole cost and expense, maintain, repair and/or replace, as necessary, the Improvements, in a like or similar manner as that installed by the County within the Project Limits. The maintenance by the City shall further include, but not be limited to, the following:
 - a) Mow, cut and/or trim and edge the grass or turf in accordance with the latest edition as of the date of this Covenant, of the State of Florida "Guide for Roadside Mowing" and the latest edition as of the date of this Covenant, of the "Maintenance Rating Program";
 - b) Properly prune all plants, which include plant and tree trimmings, in accordance with the latest edition as of the date of this Covenant, of the "Maintenance Rating Program", and prune, trim and/or edge such parts thereof which may present a visual or other safety hazard for those using or intending to use the right-of-way;
 - c) Keep plants as free as possible from disease and harmful insects; remove and properly dispose of dead, diseased or otherwise deteriorated plants in their entirety, and replaced those that fall below original Landscape Work standard;
 - d) Properly remove and dispose of all undesirable vegetation including but not limited to weeding of plant beds and removal of invasive exotic plant materials;
 - e) Properly mulch all plant beds;
 - f) Water and fertilize all plants properly;
 - g) Remove and dispose of all trimmings, roots, branches, litter, etc., resulting from the activities described above;
2. The City shall be responsible for performing the work described in Paragraph 1 with a minimum frequency of twelve (12) times per year. The work shall include any additional conditions that the County, or the authority having jurisdiction over the right-of-way, may impose.
3. The County shall be only responsible for replacing damaged trees for reasons other than maintenance, such as, without limitations, natural disasters, storm events, and traffic accidents.

4. If the County, or the authority having jurisdiction over the right-of-way, determines that the City is not accomplishing or complying with its responsibilities and/or duties under this Covenant, the County shall provide the City with a written notice, stating any deficiency or deficiencies that require correction. The City shall have sixty (60) calendar days, from the date of the receipt of the notice, to correct the cited deficiency or deficiencies.

In the event that the City has not corrected the deficiency or deficiencies for which notice is given or, if the deficiencies are of a nature that cannot be corrected within that time period and the City does not commence to correct the deficiencies within the time period stipulated, then the County shall maintain, repair, replace or otherwise correct the deficiency or deficiencies, and all costs and expenses shall be invoiced to the City. The City must pay the invoice in full, within thirty (30) calendar days of the receipt of the invoice by the City.

Any notices to be provided hereunder shall be in accordance with the provisions of Paragraph 11.

In the event of any default of the City in the payment of the invoice and/or its failure to comply with its maintenance responsibilities under this Covenant, the County or the authority having jurisdiction over the right-of-way, may, at its election and option, remove the Improvements from the medians within the Project Limits.

5. It is understood and agreed that all of the improvements covered by this Covenant may be removed, relocated, or adjusted, at any time in the future, as found necessary by the County or the authority having jurisdiction over the right-of-way, in order that the adjacent public right of way be widened, altered or otherwise changed and maintained to meet with future criteria or planning by the County or the authority having jurisdiction over the right-of-way. In such an event, the maintenance responsibilities of the City shall survive any such relocation or adjustments, so long as the materials or facilities remain within the Project Limits.

6. Subject to the provisions of 768.28, Florida Statutes, the City does hereby agree to indemnify and hold harmless the County, or the authority having jurisdiction over the right-of-way, from any and all damages and/or liability which may arise by virtue of the County installing the Improvements within the public right of way, and/or from any act or omission of the City related to the maintenance and preservation thereof, including any and all work to be performed within the public right-of-way, pursuant to this Covenant.

7. This Covenant and the rights hereunder may be assigned by the County to the authority having jurisdiction over the right-of-way. The provisions and conditions herein stated shall remain in full force and effect until such time as this obligation has been cancelled by instrument filed in the Public Records of Miami-Dade County, Florida by an authorized representative of the County, or by an authorized representative of the authority having jurisdiction over the right-of-way.

8. This Covenant only pertains to the Improvements, as herein defined, along SW 57 Avenue from SW 74 Street to SW 72 Street, as further depicted on the roadway plans, attached as Exhibit "A".

9. This covenant is subject to termination under any one of the following conditions:

- a) By the County, or the authority having jurisdiction over the right-of-way, if the City fails to perform its duties under Paragraph 1, following sixty (60) days written notice;
- b) If mutually agreed to by the parties, with a six (6) month prior written notice.

10. This Covenant shall become effective upon completion of the roadway construction of SW 57 Avenue, within the Project Limits, and upon issuance by the County to the City of a written Notice to Proceed letter from the Miami-Dade County Director of Transportation and Public Works.

11. All notices, requests, demands, consents, approvals and other communications which are required to be served or given hereunder shall be in writing, and hand delivered, or sent by certified U.S. Mail, return receipt requested, postage prepaid, addressed to the party to receive such notices, or at such other address that the authority having jurisdiction over the right-of-way may provide:

To the County: Alice N. Bravo, P.E., Director of Transportation and Public Works
701 N.W. 1st Court, Suite 1700, Miami, Florida 33136

To the City: City of South Miami, Steven Alexander, City Manager
City Hall, 1st Floor
6130 Sunset Drive
South Miami, FL 33143

12. This Covenant is the entire understanding and agreement as relates to the subject matter herein, and may only be modified or amended by written mutual consent of the parties.

13. This agreement shall be governed by the laws of the State of Florida. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof. Venue for any and all actions arising out of or in any way related to the interpretation, validity, performance or breach of this Agreement shall lie exclusively in a state court of appropriate jurisdiction in Miami-Dade County, Florida.

Signed, sealed, executed and acknowledged on _____ day of _____, 20____.

CITY OF SOUTH MIAMI

MIAMI-DADE COUNTY

By: _____

By: _____

Name: Steven Alexander

Name: _____

Title: City Manager

Title: _____

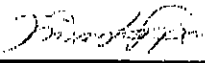
Attest: [Signature]

Attest: _____

Name: _____
Name: _____
Title: _____
Title: _____

Legal Review:

City Attorney

By:  _____
Name: Thomas Pepe

County Attorney

By: _____
Name: _____

